

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

VANESSA CAMPER,

Plaintiff,

STATE FARM FIRE AND CASUALTY
COMPANY and ALLSTATE
INSURANCE COMPANY.

Defendants.

CASE NO. C18-5486 BHS

ORDER DENYING STATE
FARM'S MOTION FOR PARTIAL
SUMMARY JUDGMENT AND
GRANTING ALLSTATE'S
MOTION FOR SUMMARY
JUDGMENT

This matter comes before the Court on Defendant State Farm Fire and Casualty Company's ("State Farm") motion for partial summary judgment re: coverage, Dkt. 17, and Defendant Allstate Insurance Company's ("Allstate") motion for summary judgment re: coverage, Dkt. 21. The Court has considered the pleadings filed in support of and in opposition to the motions and the remainder of the file and hereby denies State Farm's motion and grants Allstate's motion for the reasons stated herein.

I. PROCEDURAL HISTORY

On May 16, 2018, Plaintiff Vanessa Camper (“Camper”) filed a complaint in Pierce County Superior Court for the State of Washington against State Farm and

1 Allstate. Dkt. 1-2. Camper alleges that the insurance companies are liable for all
2 damages associated with the flooding of her house on May 17, 2017. *Id.*

3 On June 14, 2018, Allstate removed the matter to this Court. Dkt. 1.

4 On June 19, 2019, State Farm and Allstate filed the instant motions for summary
5 judgment. Dkts. 17, 21. On July 8, 2019, Camper responded. Dkts. 23, 27. On July 12,
6 2019, State Farm and Allstate replied. Dkts. 28, 30.

7 II. FACTUAL BACKGROUND

8 On the morning of May 17, 2017, Camper walked down the stairs of her home to
9 the lower level and “walked right into water.” Dkt. 18-1 at 4. She could not find where
10 the water was coming from, so she sought help from her neighbor. Dkt. 25, Declaration
11 of Vanessa Camper (“Camper Decl.”), ¶¶ 5–6. They discovered that water was flowing
12 down her driveway and into her garage. *Id.* ¶ 7. At some point, Camper discovered that
13 the water was emanating from a broken pipe between the main water connection and her
14 house. Camper contacted Allstate and Washington Restorer, a home restoration
15 company. *Id.* ¶ 8. Washington Restorer sent its employee Maggie King (“King”) to
16 Camper’s house to appraise the damage and develop a remediation plan. Dkt. 26, ¶ 2.

17 When King arrived at the house, the water had been turned off, but the source of
18 the leak had not been identified. *Id.* ¶ 6. King asserts that the water heater was damaged
19 and the electrical wiring in the house had been compromised by the flooding. *Id.* King
20 opines that the house was uninhabitable because (1) there was no water, (2) the electrical
21 system was compromised, (3) asbestos insulation had been damaged and needed to be
22 removed, and (4) mold had started to form. *Id.* ¶ 7.

1 Camper submitted the remediation plan and construction bids to Allstate, but
2 Allstate denied coverage. Several weeks after the incident, Camper discovered that she
3 also had a homeowner's policy with State Farm. Camper Decl., ¶ 13. Camper submitted
4 a claim, and State Farm assigned adjustor Fred Long ("Long") to the claim. *Id.* Initially,
5 State Farm denied coverage, but it eventually provided some coverage for the damage.
6 *Id.* ¶ 15. Although King told Camper that the home was uninhabitable, State Farm
7 refused to compensate Camper for substitute housing. *Id.* ¶ 16. Camper claims that Long
8 would not authorize remedial work until Camper paid to fix the broken pipe. *Id.* In
9 September, Camper obtained funds to pay for the pipe repair. She then hired DrainTech
10 Northwest to excavate and repair the water line. *Id.*, Exh. A.

11 On the date of the loss, Camper had a homeowner's insurance policy with State
12 Farm. Dkt. 18-3. The relevant parts of the policy for the purposes of this motion are (1)
13 the losses not insured provision and (2) the mitigation of losses provision. In the first
14 provision, the policy states that State Farm will not cover loss to property that is caused
15 by "wear, tear, marring, scratching, deterioration, inherent vice, latent defect or
16 mechanical breakdown" or "mold, fungus or wet or dry rot." Dkt. 19-1 at 8. The
17 provision also states that State Farm does "not insure under any coverage for any loss
18 consisting of the items" listed above. *Id.*

19 Regarding the mitigation of losses provision, the policy states an insured's duties
20 after a loss. Included in those duties is the duty to give immediate notice to State Farm
21 and the duty to protect the property from further damage or loss. *Id.* at 9.

1 On the date of the loss, Camper had a homeowner's policy with Allstate. Relevant
2 to the instant motion, the policy covered losses resulting from a sudden and accidental
3 escape of water or steam from a plumbing system within the dwelling. Dkt. 22-2 at 24–
4 25. The policy, however, excluded losses resulting from “[w]ater or any other substance
5 on or below the surface of the ground, regardless of its source. This includes water or any
6 other substance which exerts pressure on, or flows, seeps or leaks through any part of the
7 residence premises.” *Id.* at 23.

8 **III. DISCUSSION**

9 **A. Summary Judgment Standard**

10 Summary judgment is proper only if the pleadings, the discovery and disclosure
11 materials on file, and any affidavits show that there is no genuine issue as to any material
12 fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).

13 The moving party is entitled to judgment as a matter of law when the nonmoving party
14 fails to make a sufficient showing on an essential element of a claim in the case on which
15 the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317,
16 323 (1986). There is no genuine issue of fact for trial where the record, taken as a whole,
17 could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec.*

18 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must
19 present specific, significant probative evidence, not simply “some metaphysical doubt”).

20 See also Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists
21 if there is sufficient evidence supporting the claimed factual dispute, requiring a judge or
22 jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477

1 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d
2 626, 630 (9th Cir. 1987).

3 The determination of the existence of a material fact is often a close question. The
4 Court must consider the substantive evidentiary burden that the nonmoving party must
5 meet at trial—e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477
6 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The Court must resolve any factual
7 issues of controversy in favor of the nonmoving party only when the facts specifically
8 attested by that party contradict facts specifically attested by the moving party. The
9 nonmoving party may not merely state that it will discredit the moving party's evidence
10 at trial, in the hopes that evidence can be developed at trial to support the claim. *T.W.*
11 *Elec. Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson*, 477 U.S. at 255). Conclusory,
12 nonspecific statements in affidavits are not sufficient, and missing facts will not be
13 presumed. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888–89 (1990).

14 **B. Insurance Contracts**

15 “A determination of coverage involves two steps: first, ‘[t]he insured must show
16 the loss falls within the scope of the policy’s insured losses.’” *Moeller v. Farmers Ins.*
17 *Co. of Wash.*, 173 Wn.2d 264, 271–72 (2011) (quoting *McDonald v. State Farm Fire &*
18 *Cas. Co.*, 119 Wn.2d 724, 731 (1992)). “Then, in order to avoid coverage, the insurer
19 must ‘show the loss is excluded by specific policy language.’” *Id.* at 272 (quoting
20 *McDonald*, 119 Wn.2d at 731).

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1 **C. State Farm's Motion**

2 State Farm moves for judgment as a matter of law on four issues as follows: (1)
3 the cost of repairing the underground water pipe that caused the flood; (2) restoration
4 expenses related to mold; (3) expenses related to temporary housing; and (4) any increase
5 mitigation or repair costs resulting from Camper's alleged failure to timely mitigate the
6 loss.

7 **1. Underground Pipe**

8 State Farm argues in a four-sentence conclusory fashion that the policy excludes
9 coverage for damages to the waterline itself based on the exclusion for latent defects or
10 defects in the material used in construction. Dkt. 17 at 11. In a similar conclusory
11 fashion, Camper argues that State Farm "has submitted no evidence to identify what
12 caused the water pipe to break and discharge water" and that "[i]t makes no sense that the
13 policy would provide coverage for damage caused by the 'sudden and accidental
14 discharge of water from a plumbing system' yet have an exception for the cost of fixing
15 the plumbing to prevent further discharge." Dkt. 23 at 9 (citing a coverage provision in
16 the policy). State Farm replies that Camper "has identified no cause of the pipe failure
17 which could be covered." Dkt. 30 at 4. To recap, State Farm moved for judgment based
18 on the application of an exclusion and then shifted its position by arguing for the first
19 time in reply that Camper has failed to meet her burden to establish coverage. The Court
20 strikes the latter argument regarding coverage because it is presented for the first time in
21 a reply. *See Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007) ("The district court
22 need not consider arguments raised for the first time in a reply brief."). Regarding the

1 application of the exclusion, State Farm fails to establish that no material facts exist or
2 that no reasonable juror could find other than for State Farm. *Calderone v. United States*,
3 799 F.2d 254, 259 (6th Cir. 1986) (“*where the moving party has the burden*—the plaintiff
4 on a claim for relief or the defendant on an affirmative defense—*his showing must be*
5 *sufficient for the court to hold that no reasonable trier of fact could find other than for*
6 *the moving party.*”). Therefore, the Court denies State Farm’s motion on this issue.

7 **2. Mold and Additional Living Expenses**

8 State Farm moves for judgment on Camper’s claims for the repair costs of mold
9 and for additional living expenses. Dkt. 17 at 11–13. However, both of these arguments
10 are based on the conclusion that the broken water pipe is an excluded peril. *See, e.g.*,
11 Dkt. 17 at 13 (“the mold was also caused by the failed water line.”). State Farm has
12 failed to establish that the broken water line is subject to an exclusion and therefore the
13 Court denies the motion as to the mold and the additional living expenses as well.

14 **3. Failure to Mitigate**

15 State Farm again argues in conclusory fashion that it is not responsible for the
16 “increased costs of mitigation and repair” because Camper failed to timely notify State
17 Farm of the loss. Dkt. 17 at 13–14. Even if the Court agreed with State Farm that
18 Camper failed to timely notify it of the loss, the Court declines to grant such a general
19 request to preclude “increased costs of mitigation and repair.” State Farm fails to
20 articulate what it considers acceptable costs as opposed to “increased costs” and
21 essentially asks the Court to sua sponte determine which costs are which. At the very

1 least, State Farm has failed to show that it is entitled to judgment on this issue or that no
2 material questions of fact exist. Therefore, the Court denies State Farm's motion.

3 **D. Allstate's Motion**

4 Allstate argues that the policy provides no coverage for damages resulting from
5 exterior water entering Camper's home. Dkt. 21 at 6–7. Allstate's policy excludes
6 coverage for “[w]ater or any other substance on or below the surface of the ground,
7 regardless of its source. This includes water or any other substance which exerts pressure
8 on, or flows, seeps or leaks through any part of the residence premises.” Dkt. 22-2 at 23.

9 Although that language is clear, Camper argues that the policy is ambiguous because it
10 provides coverage for a “sudden and accidental escape of water or steam from a
11 plumbing system within your dwelling” and “dwelling” is defined as “building structure
12 with a roof and walls, where you reside, and which is principally used as a private
13 residence.” Dkt. 27 at 4–5. Camper argues that “the plumbing system, including its
14 intake pipes are an essential part of the dwelling structure” because “[y]ou cannot have a
15 house without water pipes bringing water into the house.” *Id.* at 5. Camper has failed to
16 establish any ambiguity in the policy language. To establish an ambiguity, Camper must
17 show that some language “is fairly susceptible to two different but reasonable
18 interpretations.” *Ross v. State Farm Mut. Auto. Ins. Co.*, 132 Wn.2d 507, 515 (1997)

19 (quoting *Transcontinental Ins. Co. v. Washington Public Utilities Districts' Utility*
20 *System*, 111 Wn.2d 452, 456–57 (1988)). In short, Camper's proposed interpretation of
21 dwelling is not reasonable. While the great majority of modern homes have indoor
22 plumbing, Camper has failed to establish that “dwelling” necessarily includes the means

1 for providing the structure with modern utilities. Therefore, the Court grants Allstate's
2 motion because the policy is unambiguous and excludes coverage for damages caused by
3 water that leaks through the exterior of the residence.

4 **IV. ORDER**

5 Therefore, it is hereby **ORDERED** that State Farm's motion for partial summary
6 judgment re: coverage, Dkt. 17, is **DENIED** and Allstate's motion for summary
7 judgment re: coverage, Dkt. 21, is **GRANTED**.

8 Dated this 9th day of September, 2019.

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BENJAMIN H. SETTLE
United States District Judge